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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 145

ROXANNE TANNEHILL,

versus

THOMAS W. ROBERTS, ET AL

PETITION FOR A WRIT OF CERTIORARI TO REVIEW A DECISION OF THE COURT OF APPEAL, FOURTH CIRCUIT, STATE OF LOUISIANA

DONALD V. ORGAN
DONALD M. PIERCE
1750 N. B. C. BUILDING
NEW ORLEANS, LOUISIANA 70112
ATTORNEYS FOR PETITIONER

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No. _____

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF CERTIORARI

Now into court, through undersigned counsel, comes Roxanne Tannehill, petitioner before this court seeking issuance of a writ of certiorari who moves this honorable court for leave to file such petition in accordance with Rule 31 of the rules of this Supreme Court.

ORDER

IT IS ORDERED that Roxanne Tannehill, be allowed to file the attached petition for a writ of certiorari.

May ____, 1969.

_____
JUSTICE, UNITED
STATES SUPREME
COURT

CERTIFICATE

I certify that a copy of the foregoing motion to file a petition for a writ of certiorari was mailed to Earnest L. O'Bannon, and Steven T. Victory, who, besides attorneys for mover are all of the attorneys of record in this matter, prior to the filing of this motion with this Supreme Court.

May ____, 1969

DONALD V. ORGAN
DONALD M. PIERCE
Attorney for Roxanne Tannehill

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No. _____

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Roxanne Tannehill is petitioning this Honorable Court for a writ of certiorari to review specifically a judgment of the Fourth Circuit Court of Appeal for the State of Louisiana rendered on December 2, 1968 as well as its refusal to grant a rehearing on January 6, 1969. A certified copy of the record of the Appeals Court is attached hereto as well as a copy of the refusal of the Supreme Court of the State of Louisiana to grant a writ of certiorari dated February 28, 1969.

GROUNDS FOR JURISDICTION OF THIS SUPREME COURT

The statutory provision conferring jurisdiction on this

court to review the judgment of the Fourth Circuit Court of Appeals for the State of Louisiana by writ of certiorari is provided in U.S.C.A. 28:1257 (3) specifically:

> "* * * Where the validity of a state statute is drawn in question on the ground of its being repugnant to the constitution, treaties, or laws of the United States * * *"

This Supreme Court, is also empowered to issue all writs necessary or appropriate in aid of its respective jurisdiction under U.S.C.A. 28:1651 (A) (B)

Petitioner is seeking to have the judgment of the Fourth Circuit Court of Appeals for the State of Louisiana rendered on December 2, 1968 and its refusal on January 6, 1969 to grant a rehearing, in which request for rehearing the deprivation of Federal Constitutional issues was raised, reviewed by this Supreme Court inasmuch as she has exhausted all remedies of the State of Louisiana available to her, when the Supreme Court of the State of Louisiana, on February 28, 1969 refused a writ of certiorari to review the judgment of the Appeals Court.

Because of said refusal of the Louisiana Supreme Court to review the Federal questions involved, petitioner has no other recourse but to this Supreme Court under the laws of the State of Louisiana and the United States of America.

QUESTIONS PRESENTED FOR REVIEW

1. Did the reversal, based upon fact only, by the Appeals Court for the State of Louisiana of a trial jury's finding of fact for which relator had paid the statutory fees constitute a deprivation of property or a vested property right without due process as guaranteed by the Fourteenth Amendment to the United States Constitution?

2. Is Article VII, Paragraph 29 of the Constitution of the State of Louisiana repugnant to the Fourteenth Amendment of the United States Constitution or the Due Process Clause thereof because it sanctions a factual review and reversal of jury verdicts rendered at the trial level when the litigants have paid special fees and costs to have the factual issues resolved by a jury?

3. Having paid special fees for a jury decision, does the litigant then have a vested right to a jury decision to the extent that it could not be taken away from the litigant solely because an appellate court disagreed with the facts found by the jury; and, would such vested right constitute property that cannot be taken away without due process?

CONSTITUTIONAL PROVISION, STATUTES, ETC.

United States Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law,* nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution, United States of America, Amendment 14, Section 1; U.S.C.A. Constitution, Amendment 14, Sec. 1, Page 3, 4

Louisiana Constitution

"The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, *and all appeals shall be both upon the law and the facts."*

Constitution, State of Louisiana, Article 7, Par. 29, Louisiana Statutes Annotated; Constitution Vol. 2, Pg. 280.

STATEMENT OF THE CASE

Petitioner, Roxanne Tannehill, filed suit against various defendants in the Civil District Court for the Parish of Orleans, State of Louisiana to recover damages for personal injuries and property damage incurred by her when she was involved in an automobile head-on collision.

Upon filing the aforementioned, Roxanne Tannehill specified a jury trial for which she was required to pay a special jury fee of $12.00 and was also required to pay the sum of $96.00 per day, as a jury fee, for each day that the trial consumed; in this case one day. Roxanne Tannehill was also required to post a jury bond to assure payment of the aforesaid indebtedness prior to her being granted a jury trial.

The case was tried before a jury and the jury returned a verdict in favor of plaintiff, Roxanne Tannehill, in the amount of $5,500.00. A motion for new trial by one of the defendants, Trinity Universal, was denied by the district court.

The defendant, Trinity Universal Insurance Company, appealed to the Louisiana Court of Appeal, Fourth Circuit on factual grounds only. The Appeals Court reversed that part of the judgment in favor of the plaintiff and against the defendant, Trinity Universal Insurance Company, and rendered judgment in favor of Trinity Universal Insurance Company, dismissing the plaintiff's suit at her costs on December 2, 1968. A rehearing was applied for upon the specific

Federal question raised here but denied by the appellate court on January 6, 1969.

Plaintiff, Roxanne Tannehill, applied to the Supreme Court of the State of Louisiana for a writ of certiorari or review of the judgment of the Court of Appeals, however, this writ was refused on February 28, 1969. The Federal question involved, that is, the constitutionality of Louisiana's appellate review of facts as well as law as specifically spelled out in the aforegoing questions presented for review was also raised by plaintiff in her application for writs of certiorari or review to the Supreme Court of the State of Louisiana.

ARGUMENT

The commonly called due process clause of the Fourteenth Amendment to the Constitution of the United States of America reads as follows:

> "* * * Nor shall any state deprive any person of life, liberty or property, without due process of law; * * *"

Roxanne Tannehill did have a property right in and to a jury decision on the facts of her case. She complied with Louisiana Statutory law which qualified her for a jury trial, that is, she paid a required jury fee of $12.00, posted a required jury bond of $250.00, and paid the jury's trial fee of $96.00. From that point on Roxanne Tannehill had an absolute right to a jury verdict on the facts as established by the Supreme Court of the

State of Louisiana in *Parish v. Holland* (116 So. 580) wherein that court held:

> "Right to jury trial in proper case is absolute after required cash deposit is made and bond for costs filed, * * *"

Roxanne Tannehill bought and paid for a jury decision on the facts of her case. The Appeals Court, based upon their disagreement with the jury *on a point of fact and not a point of law,* did reverse the jury and effectively deprived her of the jury verdict without due process of law.

How was Roxanne Tannehill denied due process of law? Firstly, it has been held by this Supreme Court that the deprivation of property does not require a physical taking. See, *Mac Innes v. McKay,* 49 S.Ct. 344. Also, this Supreme Court has defined property thusly:

> "The word 'property' in the Fourteenth Amendment embraces all valuable interests which a man may possess outside of himself, — outside of his life and liberty." *Bradley, J. Campbell v. Holt,* 6 S.Ct. 209.

Secondly, since it was not necessary that the jury verdict, purchased with currency and thence something of established value and in which petitioner had a vested property interest, be physically taken from her, we must determine if this deprivation of property was arbitrary or whether it met essential elements of due process of law. We submit that it did not and

that Article VII, Paragraph 29 of the Constitution of the State of Louisiana is repugnant to the due process clause of the United States Constitution because it sanctions factual review and reversal of jury verdicts rendered at the trial level even though the litigants have paid special fees to have the factual issues resolved by a jury.

It is of course basic that due process of law as enunciated in the Fourteenth Amendment means adequate notice, and a hearing, *Orchard v. Alexander,* 15 S.Ct. 635, *Jacob v. Roberts,* 32 S.Ct. 303. The following language of this Supreme Court in *Garfield v. United States* 29 S.Ct. 62, is particularly applicable here:

> "One who has acquired rights by an administrative or judicial proceeding cannot be deprived of them without notice and an opportunity to be heard, for the right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded, is of the essence of due process of law."

Roxanne Tannehill did acquire a property right through a valid judicial proceeding. She was not given an opportunity to present evidence or to defend her right to a jury verdict before the Appeals Court. She did not receive due notice of a hearing wherein she could be deprived of that property right. When the defendants against whom the jury verdict of the trial court was rendered appealed said jury verdict and convinced the Appeal Court to reverse the jury, Rox-

anne Tannehill was not then, as she should have been, given an opportunity to present a defense or proof as to why her property right should not have been taken away from her. The Appeals Court arbitrarily, without hearing any factual testimony reversed the jury on said facts, not on a point of law. The jury verdict was taken from her as well as the monetary consideration she had given in exchange for it. Petitioners submit that Roxanne Tannehill was arbitrarily denied due process of law guaranteed to her under the Fourteenth Amendment of the Federal Constitution.

WHEREFORE, the premises considered, petitioner prays that this Supreme Court issue a writ of certiorari or review, to the judges of the Court of Appeal, Fourth Circuit, State of Louisiana, to send up the record of the case to be examined and that this Supreme Court remand the case with instructions to render judgment reversing the Appeals Court and reinstating the judgment of the Civil District Court for the Parish of Orleans, State of Louisiana, the court of original jurisdiction. Petitioner further prays for all costs.

DONALD V. ORGAN
DONALD M. PIERCE
Attorneys for
Roxanne Tannehill
1750 N. B. C. Building
New Orleans, Louisiana 70112
524-7672

STATE OF LOUISIANA
PARISH OF ORLEANS

AFFIDAVIT AND CERTIFICATE OF SERVICE

BEFORE ME, the undersigned authority personally came and appeared Donald V. Organ and Donald M. Pierce, who after first being duly sworn did depose and say:

That they are attorneys for Roxanne Tannehill, petitioner in the foregoing petition for writ of certiorari to this Supreme Court; that they have prepared and read the application and that all allegations contained therein are true and correct and copies of this petition, were mailed to Earnest L. O'Bannon and Steven Victory, opposing attorneys of record in this matter herein, as well as a copy to the Chief Justice of the Supreme Court of the State of Louisiana, and copies to the Honorable Godfrey Z. Reagan, Paul E. Chasez and Luther E. Hall, judges of the Court of Appeal, Fourth Circuit, State of Louisiana.

This service was effected by placing copies in the United States mail, postage pre-paid, to all of the aforesaid gentlemen at their offices this ____ day of May, 1969.

DONALD M. PIERCE

Sworn to and subscribed
before me, Notary Public,
this ____ day of May, 1969.

NOTARY PUBLIC

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 145

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

BRIEF SUBMITTED ON BEHALF OF TRINITY UNIVERSAL INSURANCE COMPANY, Respondent

JAMES A. CROOKS
Suite 1210, Global Bldg., N. W.
1025 Vermont Avenue
Washington 20005,
District of Columbia

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1427

ROXANNE TANNEHILL

versus

THOMAS W. ROBERTS, ET AL

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

BRIEF SUBMITTED ON BEHALF OF
TRINITY UNIVERSAL INSURANCE COMPANY,
Respondent

OPINION BELOW

The opinion of the Louisiana Court of Appeals for the Fourth Circuit is reported in the transcript of the record and at 216 So. 2d 656 (La. App. 1968).

QUESTIONS PRESENTED

Whether the claimed Federal questions were timely raised in the State Courts below; and

(2) Whether the record indicates that the Louisiana Court of Appeals for the Fourth Circuit reversed finding of fact; and

(3) Whether the decision of the Louisiana Appellate Court reversing a jury verdict deprived petitioner of some right protected by the Federal Constitution, particularly Amendment XIV thereto; and

(4) Whether Article 7, Paragraph 29, Constitution of Louisiana, which sanctions appellate review of facts in civil cases is repugnant to the Federal Constitution, particularly Article XIV thereto; and

(5) Whether, where the litigant pays prescribed Court fees, he thereby purchases a verdict or judgment which may not be reviewed on appeal.

CONSTITUTIONS OR STATUTES INVOLVED

Amendment VII to the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules at common law."

Amendment XIV to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law,* nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution, State of Louisiana, Article 7, Section 27:

All cases on appeal to the Courts of Appeal shall be tried on the original record, pleadings, and evidence.

The rules of practice regulating appeals to and proceedings in the Supreme Court shall apply to appeals and proceedings in the Courts of Appeal, so far as they may be applicable, until otherwise provided.

Constitution, State of Louisiana, Article 7, Section 29:

"The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, *and all appeals shall be both upon the law and the facts.*"

STATEMENT OF THE CASE

Petitioner, Roxanne Tannehill, sued Trinity Universal Insurance Company and others in the Civil District Court for the Parish of Orleans, State of Louisiana, claiming damages for personal injuries sustained in an automobile accident. Trial was held before a jury on January 23, 1968 and by a ten to two verdict Mrs. Tannehill was awarded $5,500.00. Judgment was entered on the verdict in the amount of $5,000.00, the limits of Trinity Universal Insurance Company's policy of insurance. A motion for new trial was denied and Trinity Universal Insurance Company appealed, specifying errors of law and fact.

The Louisiana Court of Appeal, Fourth Circuit, reversed the judgment of the Trial Court, holding that:

> " * * * the jury reached a result herein which is manifestly erroneous . . ." (Tannehill v. Roberts, 216 So. 2d, 656, 659.)

Petitioner, Roxanne Tannehill, applied for a rehearing, which was denied. The Louisiana Supreme Court denied writs of certiorari and petitioner filed her application for writs of certiorari to the Supreme Court of the United States.

ARGUMENT

MAY IT PLEASE THE COURT:

POINT 1

(a) The petitioner's argument is a thinly veiled and untimely indirect attack upon Appellate review of facts and law in Louisiana. When Trinity Universal Insurance Company appealed from the trial judgment to the

Fourth Circuit Court of Appeal of Louisiana, no issue was made by petitioner of the right of the Louisiana Appellate Court to review the facts. It was only after judgment had been rendered by the Court of Appeal that petitioner, in a petition for rehearing, first raised any constitutional issue. Petitioner knew from the moment a petition for appeal was filed by Trinity Universal Insurance Company and certainly after Trinity Universal Insurance Company filed its brief, that the Court of Appeal would be called upon to review facts and law in compliance with Article 7 of the Louisiana Constitution.

Prior to oral argument in the Court of Appeal Roxanne Tannehill, through her attorneys, filed a written brief. But in this brief no constitutional issues whatsoever were raised. The matter was argued orally to the Court of Appeal and no constitutional issue or argument was made. Petitioner did not upon first opportunity timely raise the federal constitutional issues which she now urges. Thus, it was only after the Court of Appeal ruled in this case, and only by means of a perfunctory petition for rehearing that she made for the first time any constitutional argument. It is well settled that:

> "It has been many times held in this Court that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late [citing cases].
>
> "There is an exception to this rule when it appears that the Court below entertained the motion for rehearing, and passed upon the Federal question. But it must appear that such Federal question was in fact passed upon in considering the motion for rehearing; if not, the general

rule applies [citing cases]." *Forbes v. State Council of Virginia*, 216 U.S. 396, 30 S. Ct. 295, 296, 54 L. Ed. 534. See also *Herndon v. Georgia*, 295 S. Ct. 441, 55 S. Ct. 794, 79 L. Ed. 1530; *Bilby v. Stewart*, 246 U.S. 255, 38 S. Ct. 264, 62 L. Ed. 701. See also 36 C.J.S. Verbo Federal Courts Section 274 (2) pp. 749, 750; Charles Alan Wright, Federal Courts, 1963, West Publishing Company, pp. 424, 425.

(b) Petitioner seems to argue for the right to present evidence in the Louisiana Appellate Court. She says in her petition that in refusing to grant her this right, Louisiana has denied her the due processes of law guaranteed by the United States Constitution and Amendment XIV thereto. However, at no point in the state court proceedings did she make any request or demand for the right to produce evidence in the court of appeal. Only in her petition for writs of certiorari to the Supreme Court of the United States has petitioner contended for the right to produce evidence in the Louisiana Court of Appeal, Fourth Circuit, and it is only in her petition to this court that she contends that a denial of the right to produce evidence is violative of the United States Constitution. She cites no authority for these novel contentions, but in any case, the law is clear that one may not raise a Federal issue, even if this were a Federal issue, for the first time in a petition for certiorari to the United States Supreme Court. *Bailey v. Anderson*, 326 U.S. 203, 90 L. Ed. 3, rehearing denied, 326 U.S. 691, 90 L. Ed. 407; *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 87 L. Ed. 1090.

There are no substantial constitutional issues raised by petitioner's writ application, but even if there were,

by failing to timely raise them below, petitioner has waived any right which she may have had to raise them now.

POINT 2

The record does not support the contention that the Louisiana Appellate Court reviewed facts and reversed facts found by the jury. On the contrary, it simply appears that the Fourth Circuit Court of Appeal held that under the facts in the record the sudden emergency doctrine—a principle of law—is applicable, and the jury verdict was, therefore, erroneous. The Fourth Circuit Court of Appeal said:

> "The whole tenor of the record leads to the inevitable conclusion that Tannehill's actions may not be regarded as negligent in view of the sudden emergency created by the Roberts vehicle. Consequently, we are of the opinion that the jury reached a result which is manifestly erroneous and therefore this aspect of the case will be reversed." *Tannehill v. Roberts*, 216 So. 2d 356, 359.

The jury evidently found that under the facts Tannehill (Trinity Universal Insurance Company's insured) was guilty of negligence. The Appellate Court considered the facts and held as a matter of law that Tannehill was not negligent—that this was a case of sudden emergency. Under the law, since Trinity Universal Insurance Company's insured was not negligent, plaintiff could not recover.

POINT 3

Even were the facts reviewed by the Louisiana Appel-

late Court, and even were it true that the Court of Appeal found facts contrary to those found by the jury, and even if there were some constitutional prescription against or limitation of Appellate Court review of facts found by State Court juries, what the Louisiana Court did is consistent with the practice of Appellate Courts in commonlaw states and in the Federal Courts. The Louisiana Court of Appeal held that the jury verdict was "manifestly erroneous". Even the Federal Courts, which are bound by Amendment VII to the United States Constitution are expected to reverse jury findings when they are clearly or manifestly erroneous. See Federal Rules of Civil Procedure, Rule 52 (a).

POINT 4

Amendment VII to the Constitution of the United States does not apply to the states. Even had the Louisiana Appellate Court reviewed the facts, and even had the jury verdict been something less than clearly or manifestly erroneous, any state is free to modify, regulate or even abolish Civil Jury Trials. Reversal of a jury verdict on facts by a state appellate court does not contravene any applicable provisions of the Federal Constitution. This Court has squarely held that Amendment VII, which guarantees federal jury trials, is not applicable to the states. See *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678. See also *Palko v. Connecticut*, 302 U.S. 319, 58 S. Ct. 49; *Malinski v. New York*, 324 U.S. 401; 65 S. Ct. 781; *Stein v. New York*, 346 U.S. 156, 73 S. Ct. 1077; and see also the numerous cases cited therein.

The states may abolish jury trial altogether. Why then as this Court has so often said, may they not modify the Constitution of or the powers of the jury. As Mr.

Justice Holmes said so well in *Chicago, Rhode Island and Pacific Railroad Company v. Cole*, 251 U.S. 54, 56, 40 S. Ct. 68, 69:

> "There is nothing, however, in the Constitution of the United States or its Amendments that requires a State to maintain the line with which we are familiar between the functions of the jury and those of the Court. It may do away with the jury altogether, *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678; modify its constitution, *Maxwell v. Dow*, 176 U.S. 581, 20 Sup. Ct. 448, 44 L. Ed. 597; the requirements of a verdict, *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 36 Sup. Ct. 595, 60 L. Ed. 961, L. R. A. 1917A, 86 Ann. Cas. 1916E, 505; or the procedure before it, *Twining v. New Jersey*, 211 U.S. 78, 111, 29 Sup. Ct. 14, 53 L. Ed. 97; *Frank v. Mangum*, 237 U.S. 309, 340, 35 Sup. Ct. 582, 59 L. Ed. 969. As it may confer legislative and judicial powers upon a commission not known to the common law, *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150; it may confer larger powers upon a jury than those that generally prevail. Provisions making the jury judges of the law as well as of the facts in proceedings for libel are common to England and some of the States, and the controversy with regard to their powers in matters of law more generally as illustrated in *Spark v. United States*, 156 U.S. 51, 715, 15 Sup. Ct. 273, 39 L. Ed. 343, and *Georgia v. Brailsford*, 3 Dall. 1, 4, 1 L. Ed. 483, shows that the notion is not a novelty. In the present instance the plaintiff in error cannot complain

that its chance to prevail upon a certain ground is diminished when the ground might have been altogether removed."

POINT 5

The specious argument is made that in reversing the jury verdict, the Louisiana Fourth Circuit of Appeal deprived petitioner of a property right without a hearing and in violation of the "due process" clause of Amendment XIV to the Constitution of the United States. This argument is patently erroneous. At each step of the proceedings petitioner was present and/or represented by the able counsel who filed her petition for a writ of certiorari to the United States Supreme Court. After Trinity Universal Insurance Company's appeal was lodged in the Louisiana Fourth Circuit of Appeal, Trinity Universal Insurance Company filed a brief and served a copy upon petitioner through her lawyers. Her lawyers answered that brief. When the Fourth Circuit Court of Appeal heard argument on the case, petitioner was represented by her lawyers who appeared and vigorously argued the case on her behalf. At no time, as the record clearly shows, were any steps taken in the proceedings without due notice to petitioner. At all times she and/or her lawyers were physically present and took an appropriate part at all proceedings. At no time heretofore has petitioner made any complaint that any action had been taken without notice to her.

Certainly, petitioner paid fees when she filed her lawsuit and demanded a jury trial. All non-indigent litigants in Louisiana pay fees and Court costs in limine. No contention is made, nor has any contention ever been made, that Roxanne Tannehill is indigent. No fees were paid by her under protest.

The whole tenor of petitioner's argument seems to be that having paid required fees she somehow bought a verdict. This verdict, once rendered she contends, regardless of how erroneous it might have been, has become irreversable. Were this a valid argument, the effect would be to deny to the loser in the Trial Court his right of appeal. The answer to petitioner's argument is, of course, that the payment of fees only gives one the right to litigate. It does not purchase verdicts or judgments. Petitioner's case was tried by her very competent lawyers who represented her, and who vigorously advocated her cause. Ultimately she lost her case, but as the record will reflect the Louisiana Courts gave due and proper consideration to every valid issue, timely and properly made.

CONCLUSION

For the reasons stated it is respectfully submitted that this Court should deny petitioner's application for a writ of certiorari.

Respectfully submitted,

James A. Crooks

CERTIFICATE

DISTRICT OF COLUMBIA
CITY OF WASHINGTON

I James A. Crooks, counsel for respondent and a member of the Bar of the United States Supreme Court, hereby affirm under oath that a copy of the foregoing opposition to petition for writs of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage prepaid as follows, to-wit:

Honorable Melvin J. Keenan, Clerk
Louisiana Court of Appeals
Fourth Circuit
New Orleans, Louisiana

Mr. Val J. Courville, Clerk
Louisiana Supreme Court
New Orleans, La.

Donald V. Organ
Donald M. Pierce
1750 N. B. C. Bldg.
New Orleans, La.

Stephen T. Victory
Porteous, Toledano, Hainkel and Johnson
925 Hibernia Bank Bldg.
New Orleans, La.

James A. Crooks

SWORN TO AND SUBSCRIBED BEFORE ME,

this.....day of June, 1969, at the

City of Washington, District of Columbia.

.....

NOTARY PUBLIC